REMARKS

1. Preliminary Remarks

a. Status of the Claims

Claims 34-37 were pending. Claims 34 and 35 have been found allowed. Applicant herein amends claims 36 and 37. Upon entry of the amendments made herein, claims 34-37 will be pending and under active consideration in this application.

b. Claim Amendments

Claim 36 has been amended and is now directed to a vector comprising a heterologous sequence, wherein the heterologous sequence consists of the sequence of the nucleic acid of claim 34 or 35. Support for amended claim 36 can be found throughout the specification, for example, paragraph 0024, which is set forth below:

> [0024] Further in accordance with the preferred embodiment of the present invention the invention includes a vector including the DNA.

Vectors are well known to be useful for many purposes, including the transfer of a nucleic acid of interest. The nucleic acid of interest is considered to be "heterologous" with respect to the basic construct of a vector. The above provided passage of paragraph 0024 of the specification clearly shows that a vector is comtemplated that includes a nucleic acid of interest such as the subject matter of claims 34 and 35. One of ordinary skill in the art would recognize that features heterologous to the nucleic acid of claim 34 or 35 would be necessary for a functional vector.

Claim 37 has been amended and is now directed to a probe comprising a heterologous sequence, wherein the heterologous sequence consists of the sequence of the nucleic acid of claim 34 or 35. Support for amended claim 36 can be found throughout the specification, for example, paragraph 0028. which is set forth below:

> [0028] Further in accordance with the preferred embodiment of the present invention the invention includes a probe include the DNA.

Probes are well known to be useful for purpose including the hybridization and detection of a nucleic acid of interest. Hybridization is typically accomplished by using a sequence that is sufficiently complementary to the target sequence. The hybridization sequence is considered to be "heterologous" with respect to the basic construct of a probe useful for detection. The above provided passage clearly shows that a probe is contemplated that includes a hybridization sequence, such as the subject matter of claims 34 and 35. One of ordinary skill in the art would recognized that features other than the heterologous sequence would be necessary for identifying whether the probe bound to a complementary sequence.

c. Interview Summary

The undersigned would like to thank the Examiner for the courtesy of the telephone interview of February 4, 2009, wherein the new matter rejection and claim amendments were discussed. The claim amendments made herein are identical to the amendments proposed in the interview. Based on the interview, Applicant believes that the application is in condition for allowance.

2. Patentability Remarks

a. 35 U.S.C. §112, first paragraph

On pages 2 and 3 of the Office Action, the Examiner rejects claims 36 and 37 under 35 U.S.C. §112 for allegedly failing to comply with the written description rejection. The Examiner rejects claims 36 and 37 on the grounds that the specification allegedly does not provide sufficient support for viral or probe insert language. In the Advisory Action, the Examiner asserts that the support paragraph 0024 for vector claim 36 and support paragraph 0028 for probe claim 37 does not appear to provide clear written descriptive support. Applicant respectfully disagrees.

As stated above for the support of the claim amendments, amended claim 36 or claim 37 is directed to a vector or probe that comprises a heterologous sequence consisting of the nucleic acids of claim 34 or 35. The remaining "sequences" of the vector or probe are those sequences that one of skill in the art would understand to provide features that make either the vector functional or the probe identifiable when bound to a target sequence. For example, the vector could further comprise sequences that allow for the vector to replicate (*i.e.*, origin of replication), or a sequence encoding proteins that allow the cell to be resistant to particular antibiotics (*e.g.*, antibiotic markers). Similarly, the probe could further comprise a spacer sequence which, for example, would allow one to bind a probe to a chip, and provide enough spacing between the chip and the sequence of interest (*i.e.*, the heterologous sequence) to better determine whether the sequence of interest bound to a complementary sequence. In view of the foregoing amendments and above remarks, Applicant submits that the rejection of claim 36 and 37 under 35 U.S.C. §112, first paragraph, for allegedly lacking written descriptive support, has been overcome and should be withdrawn.

3. Conclusion

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution of the instant application, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

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